

PT 95-70
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

BLOOMINGTON CONGREGATION OF)
JEHOVAH'S WITNESSES)
Applicant) Docket # 93-57-18
) Parcel Index #(24) 22-30-426-017
v.)
) Barbara S. Rowe
THE DEPARTMENT OF REVENUE) Administrative Law Judge
OF THE STATE OF ILLINOIS)

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: The McLean County Board of Review filed an Application for Property Tax Exemption with the Illinois Department of Revenue (the "Department") for Bloomington Congregation of Jehovah's Witnesses (the "Applicant"). The Department denied the application finding that the property was not in exempt use. The applicant filed a protest and requested a hearing in the matter. The hearing was held at which the applicant testified that they mowed the property, placed boundary stakes and surveyed the land in 1993. It is recommended that the decision of the Director of the Department be that McLean County Parcel Index Number (24) 22-30-426-017 was in exempt use for a portion of the 1993 assessment year.

FINDINGS OF FACT:

1. The Department's position in this matter, namely that McLean County Parcel Index Number (24) 22-30-426-017 was not in exempt use for the 1993 assessment year was established by admission into evidence of Dept. Ex. Nos. 1-5.

2. The applicant acquired the property by a warranty deed dated October 12, 1993. The subject property is approximately three and one-half acres and was vacant in 1993. (Dept. Ex. No. 1)

3. The parcel was purchased by two congregations, each with approximately 80 adult members. (Tr. pp. 17-18)

4. Sunday school attendance for each would range from 120 to 150 persons. (Tr. p. 18)

5. During 1993, the applicant prepared the parcel for the construction of a place of worship by having an access driveway to U.S. Highway 150 constructed on the property. (Tr. pp. 9-12)

6. The applicant had to have the City of Bloomington engineers visit the property and approve the construction of an access driveway to the adjacent highway prior to obtaining a highway permit from the Illinois Department of Transportation. The permit was submitted on September 29, 1993 and approved on December 21, 1993. The driveway was completed in June, 1994. (Dept. Ex. No. 3; Tr. pp. 11-12; App. Ex. No. 1)

7. In the fall of 1993, the applicant took soil samples and water percolation tests. The tests had to be completed prior to the licensing of the septic tank field necessary for the church. (Tr. pp. 12-13; App. Ex. No. 1)

8. The applicant also mowed the property, placed boundary stakes and surveyed the land in the taxable year in question. (Tr. pp. 10-14)

9. The church structure itself was erected July 14-19, 1994 and worship services started in July, 1994. (Tr. pp. 18-19)

CONCLUSIONS OF LAW: Article IX, 6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The Statutes of the State of Illinois grant property tax exemptions for distinct situations. In particular, 35 ILCS 19.2 exempts certain property from taxation in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, including all such property owned by churches or religious institutions.....

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. *People ex. rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1941). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

In the recent case of *Weslin Properties, Inc. v. Department*, 157 Ill.App.3d 580 (1987), the Appellate Court held that some property which was under development and adaptation for exempt use qualified for exemption. I find in this case, as in *Weslin*, that the applicant did all that it could to prepare the property for an exempt use during the period October 12, 1993 until December 31, 1993.

I therefore find that the applicant prepared to use the property for religious purposes during the taxable year in question. I recommend that McLean County parcel index number (24) 22-30-426-017 be removed from the assessment rolls for the period of October 12, 1993 through December 31, 1993.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

November 5, 1995